Rule 807. Residual Exception.

(a) In General. Under the following circumstances, a hearsay statement is not excluded by the rule against hearsay even if the statement is not specifically covered by a hearsay exception in Rule 803 or 804:

(1) the statement has equivalent circumstantial guarantees of trustworthiness;

(2) it is offered as evidence of a material fact;

(3) it is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts; and

(4) admitting it will best serve the purposes of these rules and the interests of justice.

(b) Notice. The statement is admissible only if, before the trial or hearing, the proponent gives an adverse party reasonable notice of the intent to offer the statement and its particulars, including the declarant's name and address, so that the party has a fair opportunity to meet it.

Comment to 2012 Amendment

Rule 807 has been adopted to conform to Federal Rule of Evidence 807, as restyled.

Cases

807.010 To be admissible, the statement must have equivalent circumstantial guarantees of trustworthiness that make it at least as reliable as evidence admitted under a firmly rooted hearsay exception.

State v. Cruz, 218 Ariz. 149, 181 P.3d 196, ¶¶ 59–66 (2008) (some time after shooting, woman made statement suggesting third party may have shot police officer; woman died before trial, so defendant sought to introduce her statement; court concluded statement did not have equivalent circumstantial guarantees of trustworthiness because (1) woman had motive to lie because of her close relationship with defendant and his family, (2) she had significant criminal history, (3) statement contained several levels of hearsay, and (4) her alternative version did not fit facts of case, thus trial court did not abuse discretion in precluding statement).

807.020 To be admissible, the statement must have equivalent circumstantial guarantees of trustworthiness, which must be determined from the circumstances of the making of the statement itself, and not from other extrinsic evidence that may corroborate the statement.

State v. Roque, 213 Ariz. 193, 141 P.3d 368, ¶¶ 60–64 (2006) (for charge of first-degree murder, state's theory of case was that shootings were intentional acts of racism while intoxicated, while defendant pursued insanity defense; defendant's sister testified about their mother's mental illness; on cross-examination, prosecutor asked if her mother had ever hit her, and sister said that her grandmother told her that once her mother tried to push her into traffic; prosecutor objected and asked to have the testimony struck, which trial court did; defendant contended testimony was admissible under subsection 24; court stated there was no showing that grandmother made the statement under oath or near time of event, nor was any other indicator of reliability present, thus trial court did not err in concluding that statement did not exhibit reliability necessary to qualify as exception to hearsay rule).

Ogden v. J.M. Steel Erecting, Inc., 201 Ariz. 32, 31 P.3d 806, ¶¶ 36–38, 40 (Ct. App. 2001) (in order to prove driving record of truck driver who caused accident, plaintiffs presented truck driver's MVD record (listing three prior offenses) and police report of investigating officer,

which contained supplement by another officer purporting to show truck driver's alleged driving record (listing 10 additional prior offenses); because supplement was not authenticated, and because there was no evidence from which trial court could conclude it was in any way trustworthy, and because of discrepancies with certified MVD record, supplement did not have circumstantial guarantees of trustworthiness, thus trial court should not have admitted it).

State v. Dunlap, 187 Ariz. 441, 930 P.2d 518 (Ct. App. 1996) (because declarant made statements to grand jury while under oath, was defendant's friend and had no motive to harm him, testified to matters of personal knowledge, and never recanted his testimony, statements had circumstantial guarantees of trustworthiness).

State v. Doody, 187 Ariz. 363, 930 P.2d 440 (Ct. App. 1996) (although declarant did not know defendant and therefore had no motive to lie, made statement voluntarily under oath to police, and made similar statements in other interviews, trial court reviewed his mental condition and juvenile record, and therefore did not abuse its discretion in concluding that prior statement lacked equivalent circumstantial guarantees of trustworthiness).

807.030 The statement must be offered as evidence of a material fact.

Ogden v. J.M. Steel Erecting, Inc., 201 Ariz. 32, 31 P.3d 806, ¶¶ 36–38, 40 (Ct. App. 2001) (in order to prove driving record of truck driver who caused accident, plaintiffs presented truck driver's MVD record (listing three prior offenses) and police report of investigating officer, which contained supplement by another officer purporting to show truck driver's alleged driving record (listing 10 additional prior offenses); because plaintiffs offered supplement to prove driving record, it was offered as evidence of a material fact).

807.040 The statement must be more probative on the point for which it is offered than other evidence that the proponent can procure through reasonable efforts.

State v. Taylor, 196 Ariz. 584, 2 P.3d 674, ¶¶ 12–14 (Ct. App. 1999) (trial court admitted pretrial videotaped statement made by minor victim; because victim was available and testified in court, hearsay statement was not more probative than the in-court testimony, and thus was not admissible under this exception).

807.050 Self-serving statements, such as claims of innocence, lack circumstantial guarantees of trustworthiness.

State v. Tinajero, 188 Ariz. 350, 935 P.2d 928 (Ct. App. 1997) (after defendant was arrested for leaving the scene of an accident, he said he was not the one who had been driving the car; court held this statement lacked trustworthiness and thus was not admissible).

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